

Also included herewith is a **Terminal Disclaimer**. Pursuant to 37 C.F.R. §§ 1.20(d) and 1.321(c) the Assistant Commissioner is authorized to deduct a fee in the amount of **\$110.00**, which is the fee required for the filing of a terminal disclaimer, from Deposit Account No. 01-2508/INNS025--2/KAM.

Should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, the Assistant Commissioner is authorized to deduct said fees from Deposit Account No. 01-2508/INNS025—2/KAM.

Reconsideration of the application is respectfully requested.

AMENDMENT

IN THE CLAIMS:

Pleas amend claim 38 as follows:

2 38. (Amended) A variant of HIV-3 retrovirus, comprising three core proteins with molecular weights of about 12 kD, about 17 kD, and about 25 kD, an endonuclease with molecular weight of about 31 kD, two reverse transcriptases with molecular weights of about 49 kD and about 62 kD, a transmembrane protein with molecular weight of about 41 kD, and an outer membrane protein with molecular weight of about 120 kD, the variant characterized in that its LTR sequence is about 70% or less homologous to the LTR sequence of HIV-1 [or] and less than 55% homologous to the LTR sequence of HIV-2.

REMARKS

I. Status of the claims and support for the amendment.

Claim 38 is amended.

Claims 37-38 are pending.

Support for the amendment is found at page 20, lines 1-10 of the specification.

II. Rejection under 35 U.S.C. § 112, first paragraph

A. Deposit of biological organisms

Claims 37 and 38 are rejected under 35 U.S.C. § 112, first paragraph as “allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.”

In the instant Office Action the Examiner indicated that compliance with 35 U.S.C. § 112, first paragraph requires a deposit of the biological organisms. In compliance with the requirements of 37 C.F.R. § 1.808, Applicant herewith submits a Statement of Availability which indicates that the deposit of biological organisms, required by the Examiner, was made with the European Collection of Animal Cell Cultures (ECACC) on June 3, 1988.

In view of the enclosed Statement of Availability, Applicant contends that the Examiner's rejection under 35 U.S.C. § 112, first paragraph has been overcome and should be withdrawn.

B. Double Patenting

The Examiner has rejected claims 37 and 38 under the judicially created doctrine of obvious-type double patenting as allegedly being unpatentable over claims 1, 2, 5, 6, and 14 of U.S. Patent No. 5,567,603.

In response to the Examiners double-patenting rejections, Applicants herewith submit a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c). Pursuant to 37 C.F.R. §1.130(b) Applicant asserts that submission of this Terminal Disclaimer obviates the Examiner's double patenting rejection. Applicant, therefore, respectfully requests that the double patenting rejection be withdrawn.

B

II. Rejection under 35 U.S.C. § 112, second paragraph

Claim 38 is rejected under 35 U.S.C. § 112, second paragraph as allegedly being vague and indefinite for its use of the phrase “its LTR sequence is about 70% or less homologous to the LTR sequence of HIV-1 or HIV-2”. The Examiner has further opined that “[a]s written it is impossible to determine the metes and bounds of the claimed invention.” Applicant respectfully traverses.

As part of his rejection the Examiner has asked “what HIV-1 *or* HIV-2 LTR *sequence* is Applicant using as his reference point (emphasis added)?” Applicant interprets Examiner’s question to mean that, in the Examiner’s opinion, it is not clear whether, as originally drafted, claim 38 is requires a comparison of the HIV-3 variant LTR to one or to more than one LTR sequence. Applicant asserts that, as amended above claim 38 now clearly and distinctly sets forth the what Applicant regards as the invention and is therefore in compliance with 35 U.S.C. §112, second paragraph. Support for this amendment is found in the specification at page 20, lines 7-10 wherein it states that:

[a]nalysis of the HIV-3 sequence revealed approximately 70% homology with the corresponding 3’ LTR sequence of HIV-1 and less than 55% homology with the corresponding sequence of HIV-2.

Applicant believes that the meaning of claim 38 would now be clear to the artisan of ordinary skill. One of ordinary skill in the art would interpret claim 38 to mean that of the LTR sequence HIV-3 variant is to be compared with the LTR region from HIV-1 and with the LTR region of HIV-2 . Furthermore the ordinarily skilled artisan would view those HIV-3 variants which have approximately 70% or less homology to the LTR of HIV-1 and less than 55% homology to HIV-2 to be within the metes and bounds of the claimed invention.

In view of the above amendment Applicant believes that the rejection of claim 38 under 35 U.S.C. § 112, second paragraph has been overcome.

B

III. Conclusion

In view of the foregoing Amendment and Remarks Applicant believes that all rejections of the instant application have been overcome and that the case is now in condition for allowance.

The Examiner is invited to contact the undersigned attorney at (713) 787-1438 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



Patricia A. Kammerer
Reg. No. 29,775
Attorney for Assignee
INNOGENETICS N.V.

HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, Texas 77057-2198
(713) 787-1400

Date: Oct 19, 2000

